IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
COMPANY APPLICATION NO.444 OF 2007

Elpro International Limited ..Applicant.

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Mr. Virag Tulzapurkar, Senior Advocate i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Applicant.
Mr. C.J. Joy for the Regional Director.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**
13th April, 2007.

P.C. :

1. The Company Application has been placed in the caption of Summons for directions. At this stage four objections have been raised for the consideration of the Court by the Company Registrar :

i) The company proposes the payment to the shareholders of a part of the unpaid share capital and that consequently the procedure prescribed by sub section (3) of Section 101 of the Companies Act, 1956 is attracted;

ii) The company has taken recourse to the passing of a resolution by a postal ballot;

iii) Some of the letters of consent have been signed by

authorized signatories has opposed to the directors of the companies of whose consents have been furnished; and

iv) The Bombay Stock Exchange has refused to grant its approval.

4. In so far as the first objection is concerned, Section 101(2) applies where a proposed reduction of share capital involves either a diminution of liability in respect of unpaid share capital or the payment to equity shareholders of any paid up share capital. In the present case, it is undisputed that the proposed reduction of share capita involves a payment to shareholders of the paid up share capital. Consequently the procedure prescribed by sub section (2) will have to be followed unless a dispensation is granted under sub section (3). Sub section (3) of Section 101 empowers the Court to grant a dispensation having regard to any special circumstances of the case, if the Court thinks it proper to do so. The special circumstances in the present case have been adverted to in paragraphs 18 to 21 of the Company Application. In these paragraphs it has been stated that as of 31st January, 2007 the

Applicant had 14 secured creditors to whom a sum of Rs.17.65 Crores is owed and 193 unsecured creditors to whom an amount of Rs.7.47 Crores is owed. The auditors of the company have certified that the company has a positive financial networth both prior to and after the implementation of the proposed capital reduction scheme. 95.76% in number and 99.62% in value of the total creditors have furnished letters of no objection for a proposed reduction of capital. The object of sub section (2) of Section 101 is to enable the Court to settle the list of creditors in order to furnish an opportunity to the creditors to object to the proposal. In the present case special circumstances have been made out for the exercise of the power of dispensation under sub section (3) of Section 101 having regard to the averments set out in paragraphs 18 to 21 of the affidavit.

5. In so far as the second objection is concerned, Section 192-A provides that notwithstanding anything contained in the forgoing provisions of the Act a listed public company may, and in the case of a resolution relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot,

shall, instead of transacting the business in general meeting of the company conduct such business by postal ballot. A resolution under Section 100 does not fall within the categories specified in Rule 4 of the Companies Passing of the Resolution by Postal Ballot Rules 2001. Therefore the postal ballot is not mandatory. However, Section 192-A contains an enabling provision empowering a listed public company to take recourse to a postal ballot. On behalf of the Applicant it has been stated that the procedure prescribed by sub sections (2), (3) and (4) of Section 192-A has been duly complied with.

6. In so far as the third objection is concerned, counsel appearing for the Applicant states that in respect of those companies whose consents have been conveyed by authorized signatories as opposed to directors, the Applicant undertakes to furnish individual notice by RPAD apart from issuing an advertisement.

7. Insofar as the fourth objection is concerned, the question as to whether the refusal of the Bombay Stock Exchange on 17th January, 2007 is valid and proper would have to be kept open to be

decided at the final hearing of the scheme. For the said purpose, the Applicant is directed to give at least two weeks' prior notice to the Bombay Stock Exchange of the final hearing of the Petition. There shall accordingly be an order in terms of the minutes which are signed separately.

All authorities concerned to act on an authenticated copy of this order issued by the office of this Court.